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WAR CABINET.

UNITED NATIONS WAR CRIMES COMMISSION.

MEMORANDUM BY THE LORD CHANCELLOR.

THE Attorney-General and I have been considering, in consultation with Sir Cecil Hurst, the Chairman of the Commission, and Sir William Malkin, the situation in which the work of this Commission now finds itself, and we feel that a situation has arisen which calls for the attention of the War Cabinet and, it may be, for some authoritative decisions. The main matters which give us concern are stated in the following paragraphs.

2. The Commission has now been at work for five months. It includes members drawn from or representing the Dominions and all the principal Allies, except Soviet Russia. The purpose of the Commission was to investigate all cases referred to it by any of the Allied Governments of atrocities committed by, or by order of, the nationals of any of the countries at war with any of the United Nations against nationals of the United Nations; to collect, record and assess all available evidence upon such atrocities, and particularly on atrocities organised and committed in accordance with deliberate policy; and to report from time to time to the Governments of the United Nations cases in which the Commission is satisfied that an atrocity has been committed, naming, where possible, the person or persons whom they consider responsible. This was the basis upon which the President of the United States approved the appointment of the Commission for the Investigation of War Crimes, and an announcement to this effect was made both here and in America on the 7th October, 1942.

3. It is evident, therefore, that the first and main task of the Commission was to collect evidence of war crimes such as might be made the basis of trial and punishment by such methods as the Allies might adopt. I have, however, recently received a letter from the Chairman, Sir Cecil Hurst, which shows that very little progress has been made with this task. Up to the end of March only about seventy cases had been transmitted to the Commission by the National Offices of the different Allies. Of these, half are incomplete, and a large number of the cases can only be described as trivial in character. Some of the Allies—among them the United States, Greece and Yugoslavia, have, so far, not set up a National Office for the transmission of evidence to the Commission, though evidence may have been collected by those Governments. If one contrasts this minute result with the pronouncements that have been made of the intentions of the Allies (some of which are set out in the Annexes 1 to 6 to this paper) one appreciates the anxiety of the Chairman of the Commission as to the position. There is a widespread assumption (though the details of the Commission's work are, of course, not publicly known) that at the end of the war the Commission will have put the Allied Governments in the position to institute proceedings against war criminals for definite outrages which can be proved, and yet the prospect of any such actual result being secured by the present working of the Commission is exceedingly meagre.

4. I think the paucity of the result is in part due to an unduly narrow construction of their terms of reference which the Commission has adopted and have transmitted to the Allies. They have discouraged the transmission of evidence to them unless the evidence available actually points to some particular

enemy individual being responsible so that he can be named as an accused. The Attorney-General and I think that this is much too strict a limitation to put upon the work of the Commission and that it would be of the utmost value if the Commission were to endeavour to collect evidence available of war crimes (and expecially of organised atrocities) whether or not it is possible on present information to mention by name the individual primarily responsible. It may be that if details are collected now with the help of witnesses already available to prove the perpetration of an atrocity by the enemy, the identification of the person really responsible for ordering it will come later owing to enemy surrenders, or even at the time of the Armistice. At any rate, it seems to us that the Commission should aim at reporting to the Allied Governments the most shocking occurrences with such details as they can obtain, and not feel debarred because up to the present they cannot get the name of the commander or other officer responsible for directing these atrocities to take place. *I should be grateful for the authority of the War Cabinet in pressing this broader view of the Commission's functions.* I have explained this view to Sir Cecil Hurst, and he is personally in agreement with it and is endeavouring to get the Commission to take action on these lines.

5. The small number of cases submitted to the Commission has led that body to concentrate on other matters and to suggest extensions of its terms of reference, some of which are referred to below. But it seemed to the Attorney-General and myself of great importance that the Commission should put first their primary duty of collecting evidence of war crimes, and it would assist them if I was able to inform the Chairman that His Majesty's Government attach the greatest importance to the Commission not only collecting the details of cases against individuals but of *collecting evidence of the commission of war crimes generally by our enemies,* and, so far as possible, of seeing that the various Allied nations represented on the Commission co-operate in this task by submitting freely and fully the information which they may have.

6. The suggestion has been put forward within the Commission that members of the Gestapo, and possibly other organisations doing the same sort of work, ought, when Germany is occupied, to be surrendered *en bloc* and kept in detention until it is seen whether there is evidence implicating them in the war crimes which have been committed. This suggestion arises from the small number of individual names submitted. There are one or two members who go further and suggest that membership of the Gestapo should itself qualify for punishment. This would be contrary to our principles, but it may well be right to consider whether members of the organisation that has been administering these various occupied territories—in some cases, I think, the Gestapo, in some cases not—should not properly be detained pending the further evidence that will be available after the countries are reoccupied. This is a political issue, and if it was decided to be sound, this would not give this Commission any great increase of work, though I understand they might be able to get through underground sources further information as to the way in which the administration has been conducted in these occupied areas, and, therefore, of those who are primarily responsible for the atrocities. *If the War Cabinet approved, I think it would be sufficient if at this stage I was authorised to tell Sir Cecil Hurst that His Majesty's Government thought this suggestion was well worth further consideration and would be glad to receive and consider with the other Governments any report which the Commission issues on the suggestion.*

7. There are two special points which have been raised. At present the terms of reference on which the Commission are working do not include war crimes committed by Germans against Italians. I know that the United States Forces in Italy have been investigating evidence with regard to a particular case of this kind, and I would suggest that we *should be ready to agree to an extension of the Commission's terms of reference to include such cases,* it being understood that this does not prejudge any decision as to how such cases should be ultimately dealt with.

8. War Crimes committed against Danes in Denmark have raised the same question as set out in the last paragraph with regard to Italians. I suggest that we *should be ready to agree on the same lines to the Commission taking evidence as to these.*

9. There is a much larger and more difficult question which has been brought before the Attorney-General and myself, and which I think requires special consideration from the War Cabinet. The question is whether the present Commission can do anything to investigate the massacres or other horrible ill-treatment

of German Jews in Germany. It is, of course, perfectly clear that this does not come within the category of a war crime, for a war crime essentially involves maltreatment by the enemy of those who are not fellow-subjects of the enemy. We asked the Chairman of the Commission what evidence the Commission had collected of the terrible massacres and atrocities in Poland perpetrated by Germans not only against Polish Jews but against Jews from other occupied countries who had been deported there to be massacred or starved (one of the quotations in the Appendix to this paper is an extract from the declaration made by the Foreign Secretary in the House of Commons on the 17th December, 1942, on this subject). Sir Cecil Hurst told us some weeks ago that none of the evidence which undoubtedly is in the possession of the Polish Government has been transmitted to the Commission. It may be that this has been due to some misunderstanding. I am told that quite recently the Polish Government has been submitting some evidence on this matter to the Commission. The Attorney-General and I have no doubt that these massacres on Polish soil by and under the authority of the German-occupying power are war crimes, and that those responsible, if they were identified and brought before a suitable tribunal, might be tried and punished under recognised principles. On the other hand, to seek to try by any sort of Allied or Inter-Allied court German officials for acts done in Germany to German subjects (albeit Jews) or to persons ordinarily resident in Germany would raise great legal difficulties. One could not appeal to the laws and usages of war or international law. It would be useless to appeal to German law, which is the law under which the officials were living and to which they were subject at the time. Hitler's treatment of the Jews both before and during the war undoubtedly will play a large part in the decision of the Allies as to his own fate or the fate of any of his important colleagues who fall into Allied hands.

10. I would like the authority of the War Cabinet to stimulate the Commission, which seems to be somewhat unenterprising in this matter, *to collect the evidence of atrocities perpetrated in occupied countries by Germans against Jews.* It may be that certain Jewish organisations which have underground communication with Poland and the like could give valuable assistance. I would be inclined to oppose any suggestions that the present Commission should collect evidence of maltreatment of Jews in Germany itself, *i.e.*, in circumstances which would not constitute an offence against the laws and usages of war. We run the risk of getting into considerable confusion if the Commission is allowed to concern itself with incidents which are not war crimes at all. If it is felt desirable to collect evidence of what has been done in Germany, the arrangements for doing this would, I think, best be made otherwise than through the Commission.

11. As the War Cabinet's attention is now being again addressed to the subject, I think it well to emphasise that *none of the above paragraphs in any way prejudge the extremely difficult question as to what is to be done with the principal miscreants* who have been responsible for the war and have acquiesced in its atrocities, should any of them fall into Allied hands at the end of the fighting. That question is by the Moscow Declaration largely relegated to the Governments of the countries where specific war crimes have been perpetrated. The fate of Hitler and Co. is a political question and must be decided by the principal Governments themselves, and not by a court of judges, whether national or international.

12. I was asked, in company with the Attorney-General and the Minister of Aircraft Production (Conclusions of War Cabinet W.M. (44) 34th Conclusions of the 13th March) to prepare for the War Cabinet's consideraton a revised draft formula to express the proposal which His Majesty's Government would make to the United States and Soviet Russia for defining the procedure to be adopted in dealing with these prime criminals. The formula we now suggest, in the light of the previous discussion, will be found in Annex 7.

S.

House of Lords,
2nd June, 1944.

ANNEX No. 1.

Statement by the Prime Minister, 25th October, 1941.

"His Majesty's Government associate themselves fully with the sentiments of horror and condemnation expressed by the President of the United States upon the Nazi butcheries in France. These cold-blooded executions of innocent people will only recoil upon the savages who order and execute them.

"The butcheries in France are an example of what Hitler's Nazis are doing in many other countries under their yoke. The atrocities in Poland, in Yugoslavia, in Norway, in Holland, in Belgium, and, above all, behind the German fronts in Russia, surpass anything that has been known since the darkest and most bestial ages of mankind. They are but a foretaste of what Hitler would inflict upon the British and American peoples if only he could get the power.

"Retribution for these crimes must henceforward take its place among the major purposes of the war."

ANNEX No. 2.

Statement by President Roosevelt, 7th October, 1942.

"On the 21st August I said that this Government was constantly receiving information concerning the barbaric crimes being committed by the enemy against civilian populations in occupied countries, particularly on the continent of Europe. I said it was the purpose of this Government, as I knew it to be the purpose of the other United Nations, to see that when victory is won the perpetrators of these crimes shall answer for them before courts of law.

"The commission of these crimes continues.

"I now declare it to be the intention of this Government that the successful close of the war shall include provision for the surrender to the United Nations of war criminals.

"With a view to establishing responsibility of the guilty individuals through the collection and assessment of all available evidence, this Government is prepared to co-operate with the British and other Governments in establishing a United Nations Commission for the investigation of war crimes.

"The number of persons eventually found guilty will undoubtedly be extremely small compared to the total enemy populations. It is not the intention of this Government or of the Governments associated with us to resort to mass reprisals. It is our intention that just and sure punishment shall be meted out to the ringleaders responsible for the organised murder of thousands of innocent persons and atrocities which have violated every tenet of the Christian faith."

ANNEX No. 3.

Statement by the Lord Chancellor, 7th October, 1942.

"Firstly, then, as to the collection of the necessary evidence. The proposal is to set up with the least possible delay a United Nations Commission for the Investigation of War Crimes. The Commission will be composed of nationals of the United Nations, selected by their Governments. The Commission will investigate war crimes committed against nationals of the United Nations recording the testimony available, and the Commission will report from time to time to the Governments of those nations cases in which such crimes appear to have been committed, naming and identifying wherever possible the persons responsible. The Commission should direct its attention in particular to organised atrocities. Atrocities perpetrated by or on the orders of Germany in Occupied France should be included. The investigation should cover war crimes of offenders irrespective of rank, and the aim will be to collect material, supported wherever possible by depositions or by other documents, to establish such crimes, especially where they are systematically perpetrated, and to name and identify those responsible for their perpetration.

"Now I have made a statement which I feel certainly greatly interests all your Lordships, but I have to make a further statement which will emphasise its importance. A corresponding statement as to this proposed Commission for

the Investigation of War Crimes is being issued in Washington by the President of the United States this afternoon. This proposal, therefore, has the joint support of the Government of the United States and of His Majesty's Government, and it has been communicated to the other United Nations directly concerned, including, of course, our Soviet and Chinese Allies, the Dominions and India, and the Fighting French, with a view to obtaining their concurrence and co-operation, and already we have received from the Allied Governments established in London and from the French National Committee replies warmly approving and adopting this proposal.

" The ambit and purpose of the United Nations Commission for the Investigation of War Crimes—that is to be its title—will be clear from what I have already said, but to avoid any misunderstanding and to take away any possible excuse for misrepresentation in enemy quarters, His Majesty's Government wish to add this—and a statement to the same effect is, I understand, being issued at this moment in Washington by the United States Government. In making this proposal for an investigating Commission the aim is not to promote the execution of enemy nationals wholesale; the aim is the punishment of individuals, obviously very few in number in relation to the total enemy population—individuals who are proved to be themselves responsible, whether as ringleaders or as actual perpetrators, for atrocities—atrocities which violate every tenet of humanity and have involved the murder of thousands, of tens of thousands, of innocent persons."

ANNEX No. 4.

Statement by the Secretary of State for Foreign Affairs, 17th December, 1942, in reply to a Parliamentary Question.

" Mr. Silverman (by Private Notice) asked the Secretary of State for Foreign Affairs whether he has any statement to make regarding the plan of the German Government to deport all Jews from the occupied countries to Eastern Europe and there put them to death before the end of the year?

" The Secretary of State for Foreign Affairs (Mr. Eden): Yes, Sir, I regret to have to inform the House that reliable reports have recently reached His Majesty's Government regarding the barbarous and inhuman treatment to which Jews are being subjected in German-occupied Europe. They have, in particular, received a note from the Polish Government, which was also communicated to other United Nations and which has received wide publicity in the Press. His Majesty's Government in the United Kingdom have as a result been in consultation with the United States and Soviet Governments and with the other Allied Governments directly concerned, and I should like to take this opportunity to communicate to the House the text of the following declaration which is being made public to-day at this hour in London, Moscow and Washington:—

> " The attention of the Governments of Belgium, Czechoslovakia, Greece, Luxemburg, the Netherlands, Norway, Poland, the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and Yugoslavia, and of the French National Committee has been drawn to numerous reports from Europe that the German authorities, not content with denying to persons of Jewish race in all the territories over which their barbarous rule has been extended the most elementary human rights, are now carrying into effect Hitler's oft-repeated intention to exterminate the Jewish people in Europe. From all the occupied countries Jews are being transported, in conditions of appalling horror and brutality, to Eastern Europe. In Poland, which has been made the principal Nazi slaughterhouse, the ghettoes established by the German invaders are being systematically emptied of all Jews except a few highly skilled workers required for war industries. None of these taken away are ever heard of again. The able-bodied are slowly worked to death in labour camps. The infirm are left to die of exposure and starvation or are deliberately massacred in mass executions. The number of victims of these bloody cruelties is reckoned in many hundreds of thousands of entirely innocent men, women and children.
>
> " The above-mentioned Governments and the French National Committee condemn in the strongest possible terms this bestial policy of cold-blooded extermination. They declare that such events can only

strengthen the resolve of all freedom-loving peoples to overthrow the barbarous Hitlerite tyranny. They reaffirm their solemn resolution to ensure that those responsible for these crimes shall not escape retribution, and to press on with the necessary practical measures to this end.' "

ANNEX No. 5.

The Moscow Declaration, 1st November, 1943.

" The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions, which are being perpetrated by the Hitlerite forces in the many countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing, and all the peoples or territories in their grip have suffered from the worst form of government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers, and that, in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by monstrous crimes of the Hitlerites on the territory of the Soviet Union, which is being liberated from the Hitlerites, and on French and Italian territory.

" Accordingly, the aforesaid three Allied Powers, speaking in the interests of the thirty-two United Nations, hereby solemnly declare and give full warning of their declaration as follows :—

" ' At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in, the above atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those liberated countries and of the free Governments which will be created therein. Lists will be compiled in all possible detail from all these countries, having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxemburg, France and Italy.

" ' Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian, or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.' "

" The above declaration is without prejudice to the case of the major criminals, whose offences have no particular geographical localisation, and who will be punished by the joint decision of the Governments of the Allies."

ANNEX No. 6.

Statement made by the Secretary of State for Foreign Affairs in reply to a Parliamentary Question, 30th March, 1944.

" *Mr. Silverman* (by Private Notice) asked the Secretary of State for Foreign Affairs whether, in view of the recent enemy occupation of Hungary and the rapid march of events in the Balkans, he has any statement to make with reference to the urgent and immediate peril which now threatens Jews and other victims of Nazi persecution in those countries.

" *Mr. Eden* : Yes, Sir. My hon. friend will have taken note of the statement made on the 24th March by President Roosevelt on the subject of his question, and of the fact that His Majesty's Government at once wholeheartedly

associated themselves with the United States Government in this matter. Further action is now under discussion between the United States Government and His Majesty's Government and I wish now to take this opportunity of making, on behalf of His Majesty's Government, the following declaration: Evidence continues to reach His Majesty's Government and Allied Governments, that the Nazi policy of extermination has not been halted. The persecution of the Jews has in particular been of unexampled horror and intensity. On this His Majesty's Government, in common with their Allies, now that the hour of Germany's defeat grows ever nearer and more certain, can only repeat their detestation of Germany's crimes and their determination that all those guilty of them shall be brought to justice. But apart from direct guilt there is still indirect participation in crime. Satellite Governments who expel citizens to destinations named by Berlin must know that such actions are tantamount to assisting in inhuman persecution or slaughter. This will not be forgotten when the inevitable defeat of the arch-enemy of Europe comes about.

"Happily there are individuals and even official authorities among the satellites who have resisted the evil German example and have shown toleration and mercy. These things are known to the Allies, and in the hope of encouraging such good deeds and increasing their number His Majesty's Government are concerned to make it clear that those who have followed the right path will also not be forgotten in the day of final reckoning. The time of respite is short, but there is still opportunity for the merciful to multiply their acts of humanity, for the guilty to try to make amends for their deeds of shame by releasing their victims and making, so far as is possible, restitution to them. His Majesty's Government are confident that they are expressing the sentiments of all the Allied Governments in calling upon the countries allied with or subject to Germany to join in preventing further persecution and co-operate in protecting and saving the innocent. His Majesty's Government, for their part, are firmly resolved to continue, in co-operation with all Governments and private authorities concerned, to rescue and maintain so far as lies in their power all those menaced by the Nazi terror."

The Prime Minister, 24*th May*, 1944. (*Speech in the House of Commons.*)

"Justice will have to be done and retribution will fall upon the wicked and the cruel. The miscreants who set out to subjugate first Europe and then the world must be punished, and so must their agents who, in so many countries, have perpetrated horrible crimes and who must be brought back to face the judgment of the population, very likely in the very scenes of their atrocities."

ANNEX No. 7.

"The Three-Power Declaration at Moscow included an announcement of the procedure to be adopted in dealing with war crimes committed in occupied territory, and concluded with the statement that this Declaration was without prejudice to the case of enemy criminals whose offences have no geographical location and who would be dealt with by a joint decision of the Governments of the Allies.

"The members of this inner ring of enemy leaders who have been generally responsible for the systematic atrocities, massacres and executions referred to in the Moscow Declaration, if they fall into the hands of the Armed Forces of the United Nations, will be held pending a decision by the United Nations as to their fate.

"Quislings will be left to be tried for treachery by their own State courts."